UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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THOMAS LAUMANN, et al.,

Plaintiffs,

v. 12 Civ. 1817 (SAS)

NATIONAL HOCKEY LEAGUE, et al.,

Fairness Hearing

Defendants.

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New York, N.Y.
August 31, 2015
2:30 p.m.

Before:

HON. SHIRA A. SCHEINDLIN

District Judge

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(Case called)

THE COURT: Welcome to all of you, some of whom I recognize from the other case. We are here to talk about the settlement that has been reached. This is the fairness hearing. One question I have, of course, is are there any objectors present who wish to be heard? I have received written objections. Are there any objectors present? No. Counsel for any objectors? No.

I can say that I have received a number of objections, a small number, and have reviewed them, so I'm aware of the content of the objections received from those people, ten in total, a very small number.

With that, I assume somebody wants to speak in support of the settlement. Mr. Langer, that's you?

MR. LANGER: That's me, your Honor.

THE COURT: All right.

MR. LANGER: Good afternoon. I take it you would like me to run through all of the criteria, and so on, for the record.

THE COURT: Sure.

MR. LANGER: Your Honor, I am here to speak in support of the settlement of the National Hockey League and the other defendants in the NHL case. The settlement itself has certain chief components, certainly the most important of which is the unbundling provision, which provides that people will be able

to buy individual team streams in the coming season at a significant, 20 percent, discount over the overall bundle that they previously had to pay.

In addition the price next year for the Internet product will be 17 percent lower for the bundle product. Practically speaking, this means that somebody who I was paying $159 last season for the bundle of all teams, who is interested in a particular team, will pay approximately $105, $106.

The discounts that I just stated are basically available to anybody, whether they are a customer of the cable companies or they are a customer, former customer, of the NHL or anybody else. They are readily available on the Internet. A person, through modern technology, can easily watch them on television. I view those pieces of the settlement as really the core pieces of the settlement.

In addition to that, there is a portion of the settlement with the MBPDs that provides that somebody who is just any cable subscriber to them will get the first three weeks of next season available on their television sets for free. If they ultimately do subscribe through that means, they will get a 12½ percent discount, representing those three weeks. For me, the core is really the NHL piece, the Internet piece that I described.

Professor Ayres has submitted a declaration to your Honor in which he basically evaluates what this means in terms

of real dollars. He very conservatively used the number of subscribers for last year in coming to his conclusions, even though there is a much larger body of people in former years and presumably, with lower prices, additional people in the coming years.

He estimates that the settlement value is between roughly 21 and $28 million, depending on how many people avail themselves of the opportunity to purchase a single-team stream as opposed to the bundle. He uses the numbers between 30 percent and 50 percent because, as your Honor will recall, the studies the defendants themselves did show that as many as 50 percent of the fans have a loyalty to a specific team. He felt that it is likely that they would buy a specific team, not bundle, a specific team subscription considering the discount involved.

He is also very conservative in his valuation because he doesn't take into account any value for the three weeks, for example, or any other attendant value.

The other key factors that are components of the settlement are, of course, the attorney's fee and costs provision, which I will speak to later as a separate part of the argument, which defendants have agreed to pay up to $6.5 million for.

The legal criteria in the circuit are really twofold. First, there is the procedural criteria: Was this an arm's

length settlement? was this the result of negotiation. In this case certainly that was the case. I have been doing this a long time. This was one of the most difficult that I have ever had. I say that bearing in mind at least that modern psychology says that the most recent experience is the one that sits strongest. But it went over a very long period of time.

I think your Honor should find some, whatever the appropriate word is, comfort in the sense that we originally were sent to Magistrate Judge Dolinger, and those efforts, which were well over a year ago, completely failed. There was no follow-up at all. The parties were at such distance from each other. The negotiation of the current settlement really began just after Thanksgiving of last year, and it wasn't consummated until June. It was long haul.

It was overseen ultimately by a mediator, a former federal judge, Judge Orlofsky. I have to say, without his efforts, I don't know that we ever would have gotten to where we got to. He helped a lot. Unlike a lot of other cases, where you have two parties, these were really not bilateral. As I understand it, there were much different interests among the defendants themselves that had to be dealt with. I think he probably was very helpful in that as well, though I was not in the room for those sessions, obviously.

Because of that, as your Honor has found in the past, and I'm quoting from your Honor's Van Oss opinion, a strong

presumption of fairness attaches because the settlement was reached by experienced counsel after extensive arm's length negotiation.

It is the procedural posture that creates the presumption. Of course, the presumption has to be confirmed by the substantive criteria. Those are the criteria that are set forth in what is commonly known as the Grinnell test.

As this Court recognized in Van Oss, which itself was an approval of a (b)(2) class, the criteria don't always fit perfectly within the context that we are presenting today because they were created in a (b)(3) context. But we can run through them, and I think all of them will support the settlement before your Honor.

First, the complexity, duration, and expense of the litigation. I don't have to dwell on the complexity. I think your Honor knows as well as anybody how complex this case is. You found in your order of May 29th that it was unusually complex.

Duration. We cite to your Honor some of the famous cases out of this district, the antitrust cases, that went to the Supreme Court. We cite the BMI case and the Brunswick case, both of which took ten years before they ultimately got resolved. Unfortunately, in both cases, even though the plaintiffs had prevailed in different parts below, the Supreme Court found against them at the ultimate stage.

We can give you more recent cases. The Walmart case in the Second Circuit took seven years. And a recent case in front of Judge Gleeson in Brooklyn, the Payment Card Interchange Fee case, which he commented, when he approved the settlement, had been pending for eight years. My understanding is they are still waiting for argument on the objections in the Court of Appeals as I stand here today.

Duration is a particular factor in this case. Unlike a damage class action, where there is some hope, because of the delay, of recouping for the class the injury that arises from the violation that continues, there is no such possibility in a (b)(2) circumstance. They won't get injunctive relief until they get injunctive relief. And the delay in obtaining the injunctive relief is a heavier factor in this context than it would be I think in a typical damages action, in fact substantially heavier.

THE COURT: But you did make a decision to forgo the damages claim. In other words, you, too, could have cross-appealed and asked the Court of Appeals to reverse this Court and to allow a damages class. But you made the considered opinion, I think, to accept this Court's ruling and proceed with the injunctive class only.

MR. LANGER: That is correct.

THE COURT: But you did start by bringing a damages claim.

MR. LANGER: There is no question. We certainly did in it a particular context. I don't want to speak to the 23(f) aspect because it is pending and we have another case.

THE COURT: It does raise that issue.

MR. LANGER: Yes. Certainly at the time we settled the case, and you can tell from the negotiation I described to you, it obviously was being negotiated a certain way and your Honor's ruling came down and it ultimately got resolved. It was resolved in the context of where we were in the district court.

THE COURT: That was my point. You made a strategic or reasoned decision to forgo damages in favor of this settlement.

MR. LANGER: Correct.

THE COURT: But it was brought as a damages class action.

MR. LANGER: Definitely.

THE COURT: As I understand it, tell me if I'm wrong, only 16 people have asked to have their dismissal without prejudice, so theoretically they can proceed with the damages actually, right?

MR. LANGER: That's correct.

THE COURT: Still only 16. The deadline has come.

MR. LANGER: Right. We are going to get to that, which is the next criterion, in a moment.

THE COURT: I'm not talking about objections per se. They excluded themselves from the dismissal with prejudice, and they have the right to do that.

MR. LANGER: Correct. Complexity and duration and, I'm going to get to it in a few minutes, increased risk. That is really the ultimate thing the courts look at, is risk. I will speak about that in a few minutes.

The reaction of the class to the settlement. Notice was sent to over 718,000 people. In addition, there were ads on the Internet. As I understand it, there were 43 million views of the ads. That is, they were on Internet sites, and they were seen 43 million times. In addition, there was an active involvement of class members.

THE COURT: I don't know if the word "see" is correct. They are displayed 43 million times. I know myself there are ads. I don't look at them, but they are there. That's OK. They were displayed. I accept that.

MR. LANGER: There was an article last week in The Times on ad blockers, of which I have availed myself. There certainly was extensive publicity both there and in the press as well.

In addition, and this I consider much more important than the others, frankly, is that 140,000 unique persons actually went to the trouble of going to the website with the complete notice. We have all been through this a lot. The

passivity of a consumer class isn't something from which normally I would draw huge conclusions. But the fact that 140,000 people actually took the trouble to go to the website, which had extensive information on it, does show us that there was a large body of people who might be members of the class who looked at this more closely and determined not to opt out or file objections.

That puts us in the position of you can satisfy some of the people some of the time. We have satisfied a lot of people in this case. I had a few phonecalls myself. I won't say I had a deluge of them, as I have had in certain other cases in my career. When I explained the settlement to people, they were reasonably happy with what they heard. None of the people I actually spoke to ultimately objected, at least as far as I can tell.

In addition, notice was sent to all of the state attorneys general under CAFA. Normally, again, they are not apt to object. But this particular case it was a high-publicity case. It's a case that has a rather strong public interest in some states. To date there is no objection.

There is an issue there that Mr. Goldfein has brought to my attention today, which is that while they received the notice of the settlement which told them that objections had to be filed by a particular date, there has to be a 90-day period between a CAFA notice and the actual approval, which will be

September, depending on how you count it, 15 or 16.

We think if there is a final approval, it should be effective September 16th, though we would ask that it be entered earlier because, frankly, the National Hockey League wants to begin the process of publicizing and marketing the product.

THE COURT: Does your proposed order say effective?

MR. LANGER: No. We just learned this when we came in today.

THE COURT: OK.

MR. LANGER: So I think the reaction of the class really strongly supports the settlement in this case.

Stage of the proceedings, the third criterion. We all know this came after discovery closed, after a summary judgment motion, which I'm sure persuaded your Honor that my colleagues and myself were thoroughly familiar with the facts of this litigation and in a position to evaluate the case prior to settlement.

The risk of establishing liability. Because of the Garber case, I don't want to spend much time on that. I will say your Honor knows the number of issues that the defendants have raised. The defendants view any one of those issues, some of which are procedural, some of which are substantive, as dispositive. Because I know your Honor is as familiar with them as anybody, I don't want to run through them as the risks.

It is a complex litigation with significant attendant risk that I think we all can agree upon.

Grinnell established this one statement which is particularly appropriate in antitrust cases. I have read many of your Honor's opinions on the subjects of approvals prior to today, the opinions. I, frankly, do not see any in antitrust. There may have been one, but I couldn't find it.

Grinnell dealt with the antitrust situation and it dealt with it at a certain point in time. It said that the only true measure is whether a prior government case established plaintiffs' prima facie case. They do that because the antitrust cases are so fraught with risk that the statute, the Sherman Act, the Clayton Act actually, has a specific provision that antedated offensive collateral estoppel that allowed plaintiffs to use a prior government decree.

The court, ruling as it did I think in 1973, before Parklane Hosiery, looked to that criteria because the statutory scheme actually recognized the importance of a prior government decree. In this case, there no prior government decree, though the actions of the defendants were open and notorious for an extended period of time and the subject of a lot of public debate. The government did not act. There was no prior action that laid the groundwork for the case that we presented to your Honor. I think that is particularly strong criterion in approving the settlement here.

The risk of establishing damages. While your Honor held in Van Oss that we were in a (b)(2) context, that really wasn't a criterion that applied. As your Honor pointed out, we would have to prevail on appeal in order to get to first base.

The risk of maintaining class through trial. There are 23(f) appeals pending. I think that suffices. If you ask me, I think we have a good chance of maintaining the class through trial. But the appeal is there.

The ability of the defendants to withstand a greater judgment. Your Honor held in Van Oss that that didn't really apply in the (b)(2) context. We possibly could have gotten greater relief and I don't think all the defendants would have gone into bankruptcy, but I'm not sure how one would argue that here today.

The range of reasonableness in light of the best possible recovery and in light of the attendant risks of litigation. Again, your Honor held in Van Oss that that didn't really apply in the (b)(2) context. I think it can be argued that what we sought and what your Honor stressed in the class decision was that the ultimate relief that would be obtained would increase choice and decrease prices. I think we substantially increased choice.

It was the first time ever that any major sports league in the United States agreed to disaggregate its games and unbundle them in the fashion that it did. It did so at a

significant discount. On top of that, we got a broader discount for everyone involved. The goal was to in some way mimic the kind of broader relief we would have gotten had we gone all the way through to the end. Instead of waiting those years for that, we have gotten it today.

THE COURT: I think you wrote that the NBA has now followed suit voluntarily, something like that.

MR. LANGER: The NBA actually just a few days after the settlement was announced -- I'm sorry I can't claim that the settlement did it.

THE COURT: I'm sure it was my decision.

MR. LANGER: -- the NBA announced that it was selling individual streams, even individual games. A sense of how the world is changing in this area and why getting the settlement now is significant is that, to be honest, following the class hearing -- I didn't get the impression that your Honor reads the sports pages regularly -- on Friday Steve Balmer, the former CEO of Microsoft who bought the Clippers, threatened Fox with the fact that he wasn't going to sign any contract with an RSN for the Clippers because they weren't offering him enough money, and he was going to stream and sell his games himself for the Clippers. He didn't say he was going to do it; he was threatening to do it. So the world is changing in this fashion quickly.

THE COURT: Which sport is that?

MR. LANGER: Basketball, your Honor.

THE COURT: Then today there was a lawsuit filed against the NFL.

MR. LANGER: Right. That is something I was going to stress in the argument.

THE COURT: Is that you?

MR. LANGER: No. Not yet anyway. It was in the fee argument. What I will point out to you is that it was -- let me save it for the fee argument.

Those are the criteria under Grinnell.

Ten people filed objections, took the trouble to do that. I greatly respect that. The objections took various forms. Mr. Beckham and a few other people objected that there was no compensation for the past, which is understandable for a layperson to present. But, as your Honor knows, it was no longer a part of the case as far as the class case at that point in time unless we prevailed on appeal.

Other people -- Mr. Zubranes, Mr. Weitzberg -- wanted better pricing concessions. That is true in every case, one could get better. I think what we got was the best that we could do under the circumstances. They don't suggest how one could come to this other, better pricing; they just suggest that it would be better.

Mr. Guthrie wrote wanting to apply this to his provider Verizon. Of course, Mr. Guthrie could buy the

Internet product and watch it on his television. Verizon was not a defendant, so we obviously could not extend it that way.

Then a group of people -- Mr. Davis, Ms. Gaul, Mr. Draper, several others -- raised the issue of the absence of blackout relief. Certainly it's a legitimate concern that they presented. It was an issue in the case from the start. It was not something we could obtain through settlement. After all those months, that is the one thing that I can say with conviction I could perhaps get a year or two from now or three, but I can't not get it through settlement.

What instead we got were, as I put it to you earlier, surrogates: Reduction in price and increase in --

THE COURT: The bottom line is the in-market blackouts remain?

MR. LANGER: The in-market blackouts remain, correct.

What I would say about all of the objectors is that none of them do what we have to do here, which is weigh the benefits of the settlement against possible relief we would get at the end and the risk attendant to getting that. They are just objections that we haven't gotten it. There is no, shall I say, concern for the remainder of the class, for the hundreds of thousands of people who did not complain of the settlement and who felt that this discount, at least to some degree, was a valuable thing such that they are not motivated to --

THE COURT: I don't know if the absence of a negative

is a positive. But they certainly didn't complain. Hundreds of thousands of people did not complain.

MR. LANGER: At least 140,000 people knew -- well, took the trouble of trying to understand what they were getting.

THE COURT: Right.

MR. LANGER: To sum up on the settlement, it is the first occasion in which there has been unbundling. The case has influenced other sports leagues to undertake similar things. It has created lower prices, it has created greater choice, and it is obtained now rather than years from now.

With regard to all of the criteria under Grinnell -- complexity, duration, cost, the stage at which it was negotiated, risks that exist --

THE COURT: All of that has to be weighed against the two things you didn't get, which were damages and the elimination of the in-market blackout. I understand that is the equation.

MR. LANGER: That's the argument on the settlement. Should I turn to the fee now?

THE COURT: Sure.

MR. LANGER: The fee in this case comes up in a context that isn't really the subject of a lot of opinions. It is the subject of one opinion by your Honor, and I found one opinion by Judge Lynch. That is where there is an agreed-upon

fee where the court is being asked to approve it. It falls somewhere between the totally contingent situation and a pure lodestar approach.

THE COURT: Which was my case?

MR. LANGER: Van Oss.

THE COURT: Same one. OK.

MR. LANGER: Rule 23(h) provides for the circumstance. It says specifically, in a certified class action, a court may award reasonable attorney's fees and untaxable costs that are authorized by law or by the parties' agreement. Then it goes on to present that.

In Van Oss your Honor put it that the task is to determine the reasonableness of the agreed-upon date. It is discussed in greater detail in the MacBean case by Judge Lynch, which we cite in our papers. He talks about the fact that in this context there is the one protection, which is that the reduction in fee isn't going to create an increased amount for the class itself. He found that to align the interests greater.

The fee petition comes to the Court in a way that truly benefited --

THE COURT: Of course, your role is much diminished if it is not a (b)(3) class. The notion of the court as fiduciary for the class members disappears. It is not coming out of their pocket. It can't.

MR. LANGER: Correct. I think we have to still seek your Honor's approval.

THE COURT: For sure. But I'm not protecting absent class members.

MR. LANGER: In that fashion, correct. In fact, the class here benefited substantially, whoever it is. Maybe we should say the defendants benefited substantially. Remember, we had two cases. Almost all of the work that was done was commonly done for both cases. In presenting a petition to your Honor, the time is basically split.

There are some places where lawyers kept certain tasks separate, certain depositions we could itemize as separate. But overall the vast amount of work that was done was common to both cases, and only half of it is the subject of the petition in front of your Honor.

THE COURT: Was that true for the 1.32 million in litigation expenses?

MR. LANGER: Yes. We were out of pocket a very, very large sum.

THE COURT: You are seeking 800,000, which isn't half of 1.32. I didn't know if you did the same reduction.

MR. LANGER: We divided them both.

THE COURT: Let me ask again. Half of 1.32 is 650.

MR. LANGER: It is not there. The other half is in the petition.

THE COURT: But it's not half. You asked for 800,000.

MR. LANGER: I think there is a misunderstanding, your Honor. I think we asked for 1.3. Some of that is still being paid.

THE COURT: I'm mixed up. I thought you advanced 1.32 million litigation expenses but you were seeking $800,000 in recovery. No?

MR. LANGER: No. I think we are seeking the full amount. May I have a moment?

THE COURT: Please.

MR. LANGER: What Mr. Leckman asked me to clarify is the 6.5 as a total is less than the fee and the total expenses because it was negotiated at the time. In other words, we put the 6.5 together as a single bundle of the fees and costs.

THE COURT: I see.

MR. LANGER: But it is less than the fees taken as a total at current rates and the total costs. But the cost that your Honor sees in the petition are one-half, roughly. Certain depositions, and so on, couldn't be allocated. But they are roughly one half of the costs we incurred. Take the experts, for example.

THE COURT: What you are saying is what you incurred was more like 2½ million?

MR. LANGER: Correct, yes. So there is that benefit. Let me go through the criteria. Let me step back a second.

Taken as a percentage of what we totally recovered, the attorney's fees themselves come to roughly 20 percent of the whole recovery, that is, the 20 million, the 28 million, plus the attorney's fee and costs that are recovered, which is the way in which that is generally computed.

Your Honor has awarded 30 percent of the fund in a number of cases that I suggest presented considerably less risk than this case, such as the Amaranth case, the Thaddeus securities case, if I pronounced it correctly, the Lehman Brothers case. All of them are securities cases.

THE COURT: There is such a thing as the lodestar cross-check which may have worked out there.

MR. LANGER: Correct.

THE COURT: You say that you did that.

MR. LANGER: Here the lodestar cross-check I think actually favors us substantially, first because the lodestar is so low. It's half of what it would have been if we just had an NHL case.

THE COURT: Right.

MR. LANGER: Second, when you compare the total hours, you have Professor Saltzburg's declaration, where he talks about the analysis the Court did in the Linerboard case where he was involved. He quotes Judge DuBois -- he was the expert in that case as well -- and he showed the total hours in this case are less than 10,000 hours. In Judge DuBois' analysis, he

shows that in a significant number of antitrust cases that were settled at a similarly late stage, the hours were like 50 to 80,000.

THE COURT: Is that because it was allocated between the two, so it was 10,000 here and 10,000 for the baseball?

MR. LANGER: It would be a total of approximately 20 in this case.

THE COURT: OK.

MR. LANGER: We were very, very efficient in the way this case was litigated. Of course, part of it was the nature of the case, I concede that. But a great part of it is the way in which it was run. It was not a case where you had a huge number of law firms, multidistrict litigation, a structure with lots of attorneys running the case, and so on. It was a small group of lawyers working very, very cooperatively together on the plaintiffs' side, which worked out in the end in terms of the number of hours ultimately expended.

THE COURT: You haven't given time sheets to the Court, right?

MR. LANGER: They are available. The time was reported regularly to an accounting firm. Mr. White has his declaration in there. He has those documents.

THE COURT: I'm just saying they weren't given to me.

MR. LANGER: Correct.

THE COURT: But they are available if I want it?

MR. LANGER: They are available if you want it. I did a calculation on the lodestar side. Having read some of your Honor's opinions, I realized that might be an issue of concern to you. Compare this case with the Amaranth case that your Honor decided three years ago. In the Amaranth case your Honor analyzed the lodestar. I did the division. If you divided the lodestar sum by the hours, it came to $570 an hour. Our historic lodestar in this case is significantly lower than that. It's $538 an hour.

THE COURT: That is the historical one or the actual, current?

MR. LANGER: That is the current.

THE COURT: Current hourly?

MR. LANGER: No. Current is 607. Historic is 538. Remember, that was three years ago. Also, I will tell you that part of the reason that the hours are as low as they are -- it is kind of hard sometimes. Different courts apply different criteria at different points in time. My firm has five lawyers. Most of us are partners.

Most of the work that your Honor saw was by senior lawyers. That's why there weren't so many hours put in, because there is not this pyramid of time that you get where you have more lawyers. If the hourly rate is a little bit high, which I don't think it is actually in this case, it is where it is because of the way it was structured.

When you look at the associates, associates at least then, who worked on the case, these were not typical people. You have people like Mr. Dubner, who was Judge Calabresi's clerk and Judge Goettel's clerk. You have Mr. Leckman, who was Judge Wood of the Seventh Circuit's clerk. These are people who brought a very, very high degree of talent and sophistication. It kept the number of lawyers involved limited, the number of hours accrued dramatically less than in other cases.

Since the hourly rate falls within a rate that your Honor had no problem with years ago, I think it avoids the necessity of your Honor having to go ask what those specific time records were. I think it is clear, it is just clear.

Going through what is called the Goldberger factors, I discussed the time and labor already. The risk. The risk here, of course, is a different risk than that which I spoke of earlier. It is the risk that was assumed at the time the case was filed. I think there is one way, from a question your Honor asked me earlier, to see how risky this case is.

When the issue of auctions was a hot issue, there was a big question: What if law firm A develops a case but all these other people file cases afterwards and they file a lower proposal, what do we do then? That was a big issue. It is an issue that Professor Saltzburg deals with actually in the Third Circuit task force report.

What would happen is people would file cases. I don't have to tell you the kind of piling on that sometimes occurred. You had in the IPO case. When I read that opinion, and I thought our courtroom was full, I thought you would need a gymnasium to deal with it.

In this case, after our case was filed, nobody -- one person filed; that case was ultimately dismissed on the arbitration issue -- there was no one who followed on, because the risk was so great. That is why other people did not follow on. Our complaint was clear. It laid things out. Nobody wanted to be involved. We even had trouble getting other firms to cooperate and join us before we filed the case.

Then, after the settlement was announced, within a week the NFL case was filed. Do you know what? The NFL case copied verbatim huge sections of our complaint, the first of the NFL cases, even though the NFL is a wholly different structure. So it's not like people weren't watching. It is only when the risk was ameliorated by the fact that a settlement occurred that other firms began to get involved.

You have a very, very good barometer there, a good of measure of the degree of risk we assumed at the beginning by the fact that nobody joined along the way, nobody filed. It remained the same group of lawyers that you saw throughout. But once it was perceived that risk was ameliorated because we achieved the settlement, people did in fact act. I think that

is the strongest indication of risk that I could show you.

Of course, the Grinnell language that I discussed earlier all arose exactly in the context of the risk of attorney's fees.

The quality of representation. Your Honor has commented in the past on the quality of the presentations that we have given, so I don't think I have to spend much time there. The one time I ever got into that, I began by saying to Judge Brody in Philadelphia, your Honor, it's always difficult for me, and she said, oh, but you'll manage. I think now I have learned not to even try, because I think you have observed it.

The requested fee in relation to the settlement, as I said earlier, is between 20 and 25 percent of the overall value of the settlement. It is actually less if you take the high end of 28 million. It's a little more if you take the low end.

Public policy in the case. Your Honor stressed in your class action opinion at some length the importance of class actions to the antitrust laws. I really can't speak better than your Honor did of the importance of class actions to the antitrust laws. It has been basically my career. I think this case was a very important case.

The fact that we are here today, that one league has unbundled and another league has followed, and the pundits, so to speak, attribute it to the presence of this case is

something that we feel good about. I think it requires that we at least get back our lodestar, which is really what we are asking for, without an enhancement.

As to the lodestar itself, the cross-check, I described it to your Honor already. We are really not seeking an enhancement. Using the current hours, once you add in the costs, it really doesn't even come to the current rate that we are asking. It's maybe a slight bump at most over the historic rate.

I think Professor Saltzburg put it best, but he didn't put it quite perfectly as to the context of this case. He said, look, the defendants know better than anybody else what the value of the plaintiffs' work was.

In this case you have two defendants who are still defendants in a big case with these very same lawyers. If you think it was easy to negotiate a fee as a part of things in that context, it certainly was not. It was a very difficult thing because we remain adversaries in a second, very similar case. So, the fact that they were willing to pay that amount should give the Court comfort as to it being a reasonable amount.

Which brings me to the incentive awards for the plaintiffs. When we were at that point in our negotiation, I said to myself, what is an appropriate incentive award? I put in "Southern District incentive awards." Then I narrowed the

search to "Judge Scheindlin." I saw that your Honor had given a range of awards in different cases.

In the Denny v. Jenkins & Gilchrist case, your Honor had given $10,000 to each of the plaintiffs. In the AFTRA v. JPMorgan case, you had given $50,000 to each of the plaintiffs. And in the Fogarazzo case, you had given 32,000 in a case to be divided among three plaintiffs. So I chose 10,000. I did that because the plaintiffs here all were deposed. They all traveled to their depositions. They were not deposed in their home places.

THE COURT: Whose pocket does that come from?

MR. LANGER: Defendants', entirely from the defendants'. Some of the plaintiffs are very sophisticated people. Mr. Silver has actually tried cases with me in this courthouse. He is a distinguished IP lawyer. Aside from sitting for depositions before the case was filed, they reviewed the complaints in great detail. During the period of settlement negotiations, they of course were consulted because they had to approve of them before we could come before your Honor.

I don't say that it is a staggering thing in the case of individuals, because, as your Honor found in finding the public purpose in these cases, you have to aggregate the claims. But they are also giving up their individual claims, which they would have retained had we continued to go forward

in order to get the suit resolved.

I think that I picked the number basically based on what I saw the Court had done in the past as a reasonable number in this context, especially since it doesn't come from anybody else other than defendants.

Unless your Honor has any questions.

THE COURT: I think you have covered everything that you could possibly cover and have done a fine job in explaining why I should sign off on your settlement and fees.

MR. LANGER: I appreciate that, your Honor.

THE COURT: Does anybody else wish to be heard with respect to any of this? No. All right.

I will very likely issue an order in the next day or two. I just want to go over the proposed order. Do you want to resubmit to add an effective date? Or I can just handwrite something like that in.

MR. GOLDFEIN: Your Honor, it is fine if you handwrite in effective of a September 16th.

THE COURT: September 16th?

MR. GOLDFEIN: Yes. That would be fine. We would like to start marketing. If we have that order, I think that will comply with CAFA.

THE COURT: OK.

MR. LANGER: I would like to hand up to your Honor a list of the opt-outs.

THE COURT: We looked for that. The 16 names, the Exhibit A16 names?

MR. LANGER: Yes. I have that.

THE COURT: We were looking around for Exhibit A. So it is the order again.

MR. LANGER: With the Exhibit A.

THE COURT: With the exhibit. This certainly is not one of your four named people, right?

MR. LANGER: No, none of the four named people.

THE COURT: I just want to be sure, since they want their incentive award.

Again, if there is nothing further, I expect to issue an order very shortly. We will do it not right now. Hopefully within a day or two. Thank you, everyone.

(Adjourned)